

## Bureau of Indian Affairs, Interior

## § 178.7

and (6) the date by which the election to acquire the life estate or lieu lands must be received in the Office of the Superintendent. Such notice shall be accompanied by a form for execution by the former owner whereby said owner elects to acquire a life estate in the lands formerly owned by said owner or elects to purchase lieu lands.

### § 178.6 Applications by former owners.

(a) Applications by former Indian owners to purchase lands formerly owned by them, or to purchase lieu lands, or to take a life estate in a tract of land within the Monument area should be made on forms furnished by the Superintendent and filed within the period specified in section 3(b) (5) of the Act. Such applications shall be filed in the Office of the Superintendent.

(b) A former non-Indian owner may file application to purchase land pursuant to section 3(b) of the Act within 1 year from the date notice is published in the FEDERAL REGISTER that the land he formerly owned has been declared excess to the needs of the Department of the Air Force and has been transferred to the Secretary. Such application shall be filed in the Office of the Superintendent. The applicant shall furnish proof of his ownership or the ownership of his predecessor in interest at the time of the acquisition of the land by the United States. Upon receipt of an application to purchase and proof of ownership the Superintendent shall cause the land to be appraised and thereafter he shall inform the applicant in writing of the fair market value of the tract which shall be the purchase price, the minimum amount of down payment required, that the balance of the purchase price may be paid in 20 annual installments, and the annual rate of interest on the unpaid balance.

### § 178.7 Conveyance documents.

(a) Where there is an election by a former Indian owner of a tract of land within the monument boundary to acquire a life estate in such tract at no cost the following types of provisions and restrictions shall be applicable to the use thereof:

(1) Agricultural uses are permitted. Only those commercial activities associated with normal agricultural operations would be allowed.

(2) Construction or reconstruction of any roads to the property, including locations and materials used, are subject to approval by the National Park Service.

(3) Mining activities of all kinds are prohibited inasmuch as the United States retains all mineral rights.

(4) Residential and other facilities necessary for, or incidental to, ranching and other agricultural purposes are permitted. This includes, but is not limited to, barns, sheds, fences, stock dams, wells utilizing surface or subsurface water, and other needed access accessory structures.

(5) The cutting of native trees, except for firewood for the personal use of the grantee, his family or assignee, is prohibited unless determined by the National Park Service to be essential to the permitted use of the tract.

(6) All improvements and structures are subject to removal upon termination of the life estate or they shall be deemed to become the property of the United States. The family or assignee of the grantee shall have a reasonable time to vacate the premises upon termination of the life estate and may harvest annual crops planted during the tenure of the estate.

(7) Water rights owned by the United States in the premises remain vested in the United States, but the grantee has a right to reasonable use of the water.

(8) Grantee must observe and adhere to all applicable Federal, State, and local laws and regulations, including Federal laws and regulations for the protection of the black-footed ferret and other wildlife in the Monument. The United States reserves the right to enter upon the conveyed lands to assure such compliance and for the exercise of any other rights and privileges reserved to it.

(9) The conveyed premises must be kept in a neat and orderly condition and no waste or injury may be committed to the land. Pollution of water on or adjacent to the property is prohibited.

(10) Reasonable precautions must be taken to prevent, suppress, and extinguish forest, brush, grass, and other fires on the property.

(11) Grantee may not claim damages for injury by or against the United States which might be directly attributable to existence of the Monument.

(12) Other provisions deemed necessary by the National Park Service in individual circumstances may be included in the conveyance document.

(b) When title to the land being acquired is to be taken in trust for the purchaser and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, a sale contract shall be executed by the purchaser and the Secretary. The down payment shall be not less than \$100 or 20 per centum of the purchase price, whichever is less. The purchaser shall be entitled to a credit of a pro rata share of the grazing fees collected by the United States for use of the land during the grazing year in which the sale contract is executed, which credit shall be applied as all or a part of the down payment for the land being purchased. In the event the proportionate share of the grazing fees credited to the purchaser is less than the required down payment, the purchaser shall pay the balance of the down payment in cash, or by certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs at the time the sale contract is executed. Upon execution of the contract by the Secretary, a deed shall be prepared and executed by the Secretary conveying title to the land to the United States in trust for the purchaser. When the sale contract and deed are executed, the balance of the proportionate share of the grazing fees, if any, due the purchaser shall be paid to him and the down payment shall be deposited in the U.S. Treasury to the credit of the United States as general fund receipts. All subsequent installment payments shall be deposited in a like manner to the credit of the United States. The sale contract shall include (1) the legal description of the land; (2) the purchase price; (3) the amount of down payment; (4) the amount of annual principal installment payments; (5) the annual rate of interest on un-

paid balance; (6) the due dates of annual installments; (7) a recital that the unpaid balance is a lien against the land and against all rents, bonuses and royalties received therefrom; (8) a recital that a delinquency of 90 days in making annual installment payments will subject the contract to foreclosure with loss of all payments theretofore made thereon; and (9) a recital that upon payment being made in full the deed to the United States in trust for the purchaser will be delivered to the purchaser.

(c) If title to the tract is acquired in a trust status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to the United States of America in trust for the purchaser by a deed executed by the Secretary.

(d) If the purchaser is to acquire the tract in a fee status and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, the title shall be conveyed to the purchaser in a fee status by a deed executed by the Secretary. The purchaser shall execute a mortgage naming the United States as mortgagee and shall execute promissory notes for the annual installment payments with the annual rate of interest set forth therein. The deed and mortgage shall be recorded in the office of the register of deeds of the county in which the land is situated, the recording costs to be borne by the purchaser. Upon payment of the full amount of the mortgage a satisfaction of mortgage shall be executed by the Secretary and delivered to the purchaser who shall be responsible for recordation thereof in the office of the register of deeds.

(e) If the purchaser is to acquire the tract in a fee status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to said purchaser in a fee status by a deed executed by the Secretary. The purchaser shall be responsible for recordation of the deed in the office of the register of deeds of the county in which the land is situated.

(f) Each deed executed pursuant to paragraphs (c), (d), and (e) of this section shall contain a provision that if

the tract is offered for sale by the purchaser within a period of 10 years from the date of said deed, the tribe shall be notified in writing that the tract is being offered for sale and of the terms of the offer and said tribe shall have a period of 60 days to exercise a right of first refusal to purchase such tract upon the terms set forth in the notice.

(g) All sale documents referred to in this section shall be recorded in the office of the Bureau of Indian Affairs having custody of the land title records of the Pine Ridge Indian Reservation pursuant to 25 CFR part 150.

#### § 178.8 Selection of lieu lands.

(a) Lieu lands which may be selected for purchase by former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument are defined as (1) those lands heretofore acquired by the United States for use of the Air Force Gunnery Range which are outside the boundaries of the Monument and outside the boundaries of the area retained for use by the Department of the Air Force which are not selected for repurchase by former owners within 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, and (2) all of the submarginal lands acquired by the United States under authority of the National Industrial Recovery Act of 1933 and subsequent relief acts, within the Pine Ridge Indian Reservation, except those submarginal lands within the area retained for use by the Department of the Air Force or within the Monument, administrative jurisdiction over which was transferred to the Secretary of the Interior by Executive Order No. 7368, dated April 15, 1938.

(b) The former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument may elect to purchase lieu lands of substantially the same value pursuant to section 4(b) and section 4(c) of the Act. Inasmuch as identification of all of the lands from which lieu selections may be made cannot be determined until the time has expired for former owners of lands outside of the area used by the

Department of the Air Force and outside the boundaries of the Monument to purchase the tracts formerly owned by them, former owners who have filed an election to purchase lieu lands within 1 year from the date of publication of the notice prescribed in section 3(b)(5) of the Act, shall be deemed to have filed a timely application to purchase notwithstanding the fact that a specific tract of land has not been designated in said election.

(c) Upon the expiration of 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, the Superintendent shall prepare a complete list of all lands available from which selections of lieu lands may be made. The Superintendent shall also prepare a list of all former owners who elected to purchase lieu lands, numbering them consecutively without regard as to date of receipt of such election. The numbers shall then be placed on separate uniform slips of paper and placed in a bowl. The numbers will then be withdrawn from the bowl and a record made of the order in which they were withdrawn. The owner of the first number withdrawn shall be afforded the first opportunity to select lieu lands. The owners of lands represented by the following numbers will be afforded an opportunity to select lieu lands in the priority in which their numbers were drawn.

(d) When all selections of lieu lands have been made as provided in paragraph (c) of this section, the Secretary shall determine the comparability of the lands originally owned and the lieu selections. If the lieu selections are not substantially the same value as the lands originally owned, the owners shall be afforded an opportunity to make other selections which are substantially the same value.

(e) To determine whether the former Indian owned land and the selected lieu land in each case are of substantially the same value, the consideration paid by the United States for each tract may be accepted as indicative of the value of each tract at the time it was acquired. If information as to the price paid for any specific tract is not available, or if for any reason it is concluded that the consideration paid by the United States for the land is not